

Brodnick et al.

U.S. Serial No. 09/661,064

REMARKS

Applicant has filed, contemporaneously herewith, a Request for Continued Examination. This Preliminary Amendment qualifies as the "submission" required under 37 CFR §1.114. Entry and consideration of each is appreciated.

On April 16, 2003, the Examiner mailed an Advisory Action reiterating the previously-made final rejection of claims 1-15 under 35 USC §§102(e) and 103(a). The Examiner indicated that Applicant's After Final remarks filed April 4, 2003 were considered but not deemed persuasive. The Examiner also indicated that the Declaration that accompanied the After Final Amendment of April 4, 2003 had been considered but was deemed ineffective to overcome the §102(e) reference. Responsive thereto, Applicant requests consideration of the following remarks which Applicant believes, together with the above amendments, place the application in condition for allowance.

Applicant believes the Declaration under 37 CFR §1.131 filed April 4, 2003 was a properly formatted declaration that satisfied the requirements of §§1.131 and 1.68 as well as MPEP §715.04. 37 CFR §1.68 permits a declaration to be filed in place of an affidavit. When filing a declaration in lieu of an affidavit, the declaration must "set forth in the body of the declaration that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true." See 37 CFR §1.68

Comparing these standards to the declaration filed on April 4, 2003, it is clear Applicant has met its burden. Specifically, the last paragraph of the declaration states:

*Doe
Sv
Xr*

The present statements have been set forth to the best of our memories and recollection and we acknowledge and recognize that willful, false statements and the like are punishable by fine or imprisonment, or both.

As the above statement clearly points out, the Applicant averred that all statements contained in the declaration were true and made on information and belief believed to be true, i.e. "to the best of our memories and recollection". Accordingly, Applicant respectfully believes that the declaration filed April 4, 2003 satisfied the rules and the policies of the Patent Office set forth in the Manual of Patent Examining Procedure (MPEP) and, as such, was effective to overcome the §102(e) reference. Moreover, the §102(e) rejection of claims 1-15 should be withdrawn as relying on a disqualifying reference .

Claim 1 was also rejected under 35 USC §103(a) as being unpatentable over David et al. For cardiac-related applications, David et al. teaches a plurality of electrodes attached to a

Brodnick et al.**U.S. Serial No. 09/661,064**

patient's chest to measure the electrical potential on the surface of the patient's chest. David et al. further teaches that the acquired data is "transmitted via radio signals emitted by miniature transmitters 121 to a receiver 122" that "is typically in the patient's home." Col. 19, Ins. 20-25. The receiver is designed to receive the data from the transmitter and forward the received data to a central station across standard telephone communication lines. Furthermore, the receiver is powered through a standard household wall outlet. Col. 19, Ins. 36-39. Accordingly, it is quite clear that David et al. teaches that the transmitter is located remotely from the receiver.

In contrast, the claimed invention is directed to a portable ECG device having an ECG monitor and a wireless communication interface. That is, the portable ECG device includes both the ECG monitor to process ECG signals received from a plurality of leads and the wireless communication interface configured to receive data from the monitor and wirelessly transmit the data to a health care provider. In this regard, the components for processing the ECG signals from the leads as well as the components for transmitting the data are integrated into a single device. This integration illustrates only one of the patentable distinctions between that presently claimed and that taught and/or suggested by David et al.

While believes this distinction was readily identifiable in the claims as they read prior to the above amendments, Applicant has, nevertheless, amended claims 1-15 to clarify that the ECG monitor and the wireless communication interface are part of a portable ECG device. As such, Applicant respectfully believes that which is called for in claims 1 is patentably distinct from that taught and/or suggested by David et al.

The Examiner also rejected claim 1 under 35 USC §103(a) as being unpatentable over Bornn et al. Bornn et al. is directed to a method of identifying valid signal-carrying channels in a cardiorespiratory alert system. Bornn et al.'s method includes acquiring cardiac data from a series of paired electrodes. See col. 9, Ins. 10-30. As noted in the After Final Amendment of April 4, 2003, one skilled in the art would readily recognize the distinctions between a paired electrodes system and a 12-lead wire assembly. In fact, the Examiner recognized the existence of such a difference between the types of lead assemblies, but sustained the rejection on the basis that the claim prior to the above amendments did not state that "all the 12 lead signals are produced". Responsive thereto, Applicant has amended claim 1 to further define the previously called for "plurality of lead wires" as a "12-lead wire assembly" and positively call for the production of a standard 12-lead ECG signal received from 12-lead wire assembly. With this positive recitation of a 12-lead wire assembly, Applicant respectfully believes that the claimed invention is patentably distinct from that taught by Bornn et al.

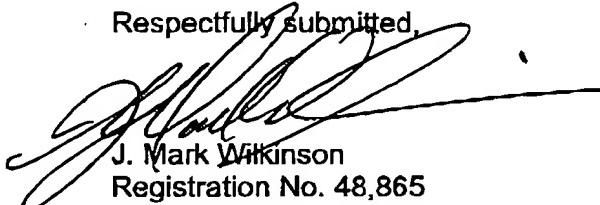
Brodnick et al.**U.S. Serial No. 09/661,064**

Regarding the rejections of claims 2-15, Applicant respectfully disagrees with the Examiner with respect to the state of the art as applied. However, in light of each of the aforementioned claims depending from what is believed an otherwise allowable claim, Applicant does not believe additional remarks are necessary and therefore requests a Notice of Allowance for claims 2-15 pursuant to the chain of dependency.

Therefore, in light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-15.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



J. Mark Wilkinson
Registration No. 48,865
Direct Dial 262.376.5016
jmw@zpspatents.com

Dated: May 5, 2003
Attorney Docket No.: GEMS8081.040

P.O. ADDRESS:

Ziolkowski Patent Solutions Group, LLC
14135 North Cedarburg Road
Mequon, WI 53097-1416
262-376-5170